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trade-mark, for it does not indicate by what persons the cigars were made, but merely that they were made by members of one of the local unions, and the right to use it depends entirely on such membership, and not on any reputation for skill in the manufacture of cigars. The use of imitations cannot be enjoined, therefore, on that ground; nor can it be prohibited on the ground that the imitations were calculated to make the public believe that the goods were the goods of another. Such an action has never been maintained except by one who was himself a manufacturer or dealer in the articles counterfeited. This action was brought by the members and officers of the "Union," and they cannot show any damage which is not too remote. *Weener* v. *Brayton*, 25 N. E. Rep. 46 (Mass.).

The few cases previously decided on this point are here carefully discussed.

TRUSTS — INSOLVENCY — PREFERRED CREDITORS. — The treasurer of the plaintiff corporation loaned money to the Globe Plow-Works Co. The treasurer had no power to make such a loan, and this fact was known to the Plow-Works Co. when it received the money. The Plow-Works Co. used the money, and afterwards made an assignment, for the benefit of creditors, to the defendant. *Held*, that the defendant held the money subject to the trust with which the treasurer of the plaintiff was charged, and that it would be deducted from the assets in the hands of the assignee before division was made among the creditors. *Davenport Plow Co.* v. *Lamp*, 45 N. W. Rep. 1049 (Ia.).

TRUSTS — INVESTMENT OF TRUST FUNDS. — A trustee invested one-quarter of the trust fund in Union Pacific stock, at 119. Later, he bought nearly as much more at 123. *Held*, that as the road had been constructed at great expense through a new country, it was heavily indebted, and its continued prosperity depended on circumstances which could not be predicted, it was evident that the trustee took a considerable risk, and therefore, although he acted in perfectly good faith and under advice, he was not justified in putting so large a proportion of the fund into such stock, and should be charged with the amount of the second investment. *Appeal of Dickinson*, 25 N. E. Rep. 99 (Mass.).

WILLS — ATTESTATION. — A statute required wills to be attested "in the presence of" the testator. In this case the will was read over to the testatrix in the presence of the witnesses, and then at the wish of the testatrix the witnesses went into an adjoining room and signed it. The witnesses then returned with the will to the testatrix, and it was again read over to her, together with the names of the witnesses. She expressed her approval, and asked one of the witnesses if they (the witnesses present) had signed it, and was told that they had, and the signatures were shown to her. The room in which the witnesses signed was adjoining that of the testatrix, and the door was open, but it was impossible for the testatrix, from where she lay in bed, to see the act of signing. *Held*, that the statute had been complied with. *Cook* v. *Winchester*, 46 N. W. Rep. 106 (Mich.).

WILLS — CONSTRUCTION — PERPETUITIES. — An estate was devised to executors in trust to divide the net income equally among the three daughters of the testatrix, and at the end of ten years to distribute the principal among them in the same proportion. There were no words of survivorship and no provision for the death of a beneficiary. *Held*, that the estate vested in the daughters at the death of the testatrix, and so the devise was not in violation of the New York statute against perpetuities, which declares that the power of alienation shall not be suspended for more than two lives in being. Gray, J., concurred only in the result; Earl, Peckham, and O'Brien, JJ., dissent. *Hillyer* v. *Vandewater*, 24 N. E. Rep. 999 (N. Y.).

REVIEWS.

AN HISTORICAL SKETCH OF THE EQUITABLE JURISDICTION OF THE COURT OF CHANCERY. Being the Yorke Prize Essay of the University of Cambridge for 1889. By D. M. Kerly. University Press, Cambridge, 1890. 8vo. Pages xiv and 295.

In a prize essay, covering so vast a field as the jurisdiction of the Court

of Chancery from the time of Edward I. to the Judicature Acts, it would be obviously unreasonable to look for the merits of a monograph. Mr. Kerly has, nevertheless, given us a thoughtful and useful book. He presents, in a compact yet attractive form, the results of a careful study of nearly everything that has been written upon his subject. He seems not to have known, however, of Professor Langdell's treatise upon Equity Pleading, nor of that writer's remarkable essays upon Equity Jurisdiction in the HARVARD LAW REVIEW. That these writings should have escaped him is the more unfortunate, since the main defect of the book before us is due to the author's failure to seize and emphasize the fundamental distinction between law and equity; namely, that the common-law judges acted *in rem*, while the Chancellor always proceeded *in personam*, and that the common law was therefore essentially unmoral, whereas equity was essentially ethical.

We have noticed a few inaccuracies. On page 74 it is said that fraud could always be pleaded as a defence at law. But Lord Abinger in 1835, in *Mason* v. *Ditchbourne*, 1 M. & Rob. 460, and the Supreme Court of the United States in 1880, in *George* v. *Tate*, 102 U. S. 564, refused to admit that defence to an action on a bond, informing the defrauded obligor that his only relief was in equity. The distinction between a condition and a use is overlooked on pages 78, 81, and 84. The statement on page 86 that debt would not lie for chattels after the reign of Edward I. is contradicted by a long line of decisions.

The common-law judges have been so uniformly abused for their narrow construction of the Statute of Uses, in refusing, as in *Tyrrell's Case*, to allow the statute to execute a use upon a use, and the chancellors have been so uniformly commended for promptly remedying the mischief of that common-law decision, that our author is hardly to be criticised for repeating, on page 135, these inveterate opinions. But they are none the less inveterate errors. It was a chancery doctrine before the Statute of Uses that there could be no use upon a use, and for the reason, quite in keeping with the spirit of the age, that the second use, being repugnant to the first, was necessarily void. The common-law judges, therefore, could not do otherwise than decide that the statute had no operation upon the void use. Furthermore, the modern doctrine, that the second use may be supported as a trust, is believed to have originated in *Sambach* v. *Dalton*, Tothill, 188, decided in 1634, a century after the Statute of Uses. J. B. A.

THE TRANSFER OF NEGOTIABLE PAPER AS COLLATERAL SECURITY. By Lewis Lawrence Smith. Philadelphia, 1890: T. & J. W. Johnson & Co. 8vo. Pages 39.

This is the Sharswood Prize Essay of the University of Pennsylvania for 1886. The essay is upon one point, viz., whether a creditor who takes negotiable paper as security for a previous debt, is safe from prior equities. The author favors the view of the English and United States Supreme Courts, that the creditor is safe, because his forbearance is a sufficient consideration. The essay is an attempt to show an actual common-law consideration from the creditor, rather than an argument from the standpoint that a bill or note is a commercial specialty. D. T. D.